UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MASON-DIXON INTERMODAL D/B/A UNIVERSAL INTERMODAL SERVICES	Cases	21-CA-252500 21-CA-252574 21-CA-264164
and		
MASON-DIXON INTERMODAL D/B/A UNIVERSAL INTERMODAL SERVICES AND SOUTHERN COUNTIES EXPRESS, INC.	Cases	21-CA-253662 21-CA-259130
and		
ROADRUNNER INTERMODAL SERVICES, LLC,	Case	21-CA-254813
and		
UNIVERSAL TRUCKLOAD, INC.,	Case	21-CA-255151
and		
INTERNATIONAL BROTHERHOOD OF TEAMSTERS		

Phuong Do and *Molly Kagel*, *Esqs*., for the General Counsel
Daniel A. Adlong and *Harrison Kuntz, Esqs. (Ogletree, Deakins, Nash, Smoak & Stewart, PC*), Costa Mesa, CA, for the Respondents
Julie Gutman Dickinson and *Jason Wojciechowski, Esqs. (Bush Gottlieb),* Glendale, CA, for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. These cases were tried remotely by virtual Zoom technology on June 14-18, 21-22, and 26-28, 2021. They stem from charges filed by the International Brotherhood of Teamsters (the Union) alleging that the Respondents, Mason-Dixon Intermodal d/b/a Universal Intermodal Services (Universal Intermodal), Southern Counties Express, Inc. (Southern Counties), Roadrunner Intermodal Services, LLC (Roadrunner), and Universal Truckload, Inc. (Universal Truckload), acting as a single enterprise and single employer, violated Section 158(a)(1), (3) and (5) of the National Labor Relations Act

(the Act)[1] in responding to a union campaign by employees in 2019.[2] The consolidated complaint alleges various coercive actions by the Respondents in the period leading up to a representation election involving Universal Intermodal's employee-drivers, including interrogation, the solicitation of complaints, promised terms and conditions of employment, and the suspension and subsequent termination of two employees who were leading the organizing effort. The complaint further alleges that, after Universal Intermodal's employee-drivers voted to unionize, the Respondents unlawfully reduced their work, closed Universal Intermodal's facility in Compton, California, laid-off the employee-drivers without notification to or bargaining with the Union, directly and laid-off Universal Trucking and Railroad employee-drivers as well. Finally, the complaint alleges that the Respondents continue to refuse to bargain with the Union over the decision to close the Compton facility and layoff its employees, the effects of those changes and a collective-bargaining agreement covering Universal Intermodal's employee-drivers, directly dealt with employee-drivers, and failed and refused to produce relevant information requested by the Union. The Respondent denied all of the material allegations, asserting that its actions had legitimate business purposes.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Universal Intermodal, a Michigan corporation, with a former office at 2035 Vista Bella Way in Compton, California (the Compton facility), provides transportation services. Annually, Universal Intermodal purchased and received at its Compton, California facility goods valued in excess of $50,000 directly from points outside the State of California.

Southern Counties, a California corporation, with a principal office in Rancho Dominguez, California (the Rancho Dominguez facility) provides full-service harbor drayage, transloading, warehousing and project cargo services in Southern California. Annually, Southern Counties purchased and received at its Rancho Dominguez, California facility goods valued in excess of $50,000 directly from points outside the State of California.

Universal Truckload, a Delaware corporation, with an office and place of business in Fontana, California (the Slover facility) provides customized transportation and logistics solutions. Annually, Universal Truckload purchased and received at its Slover facility goods valued in excess of $50,000 directly from points outside the State of California.

[1] 29 U.S.C. §§ 142-159.

[2] All dates are 2019 unless otherwise indicated.

[3] The unopposed motion of the General Counsel and the Union to correct and amend the transcript, dated August 13, 2021, is granted and, consistent with the testimony and representations therein, the transcripts for the proceedings on July 26 and 27, 2021 are corrected and amended to unseal R. Exh. 18 and substitute the PDF version of R. Exh. 21 in the record with the .xlsx file version of R. Exh. 21 that was used at the hearing.

Roadrunner, a limited liability company with offices and places of business located in Wilmington, California (the Wilmington facility) and Fontana, California (the Fontana facility) provides nationwide drayage, servicing major port and rail locations throughout the United States. Annually, Roadrunner performed services valued in excess of $50,000 in States other than the State of California.

The Respondents admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Universal Logistics Holdings

Universal Logistics Holdings, Inc. (ULH) is a holding company with five operational divisions: Intermodal, Dedicated, Truckload, Brokerage, and Valued-Added. ULH is headquartered in Warren, Michigan. Those divisions consist of approximately 37 subsidiaries, including Universal Intermodal, Universal Trucking, Roadrunner, Southern Counties, and Container Connections. Universal Intermodal and Universal Trucking are headquartered at the same location in Michigan.[4]

Universal Intermodal provides customized intermodal services, including port and rail drayage, throughout the United States. Universal Truckload transports domestic freight containers and other types of merchandise locally and regionally in Southern California using light-duty trucks and aluminum container trucks. Southern Counties and Container Connection are large movers of freight containers out of the Ports of Los Angeles and Long Beach. Roadrunner is a trucking company with 21 locations throughout the nation servicing major ports and rail locations.

ULH's operational subsidiaries are managed by Universal Management Services (UMS).[5] Tom Phillips, UMS chief executive officer, previously served as president of Intermodal Services. Dennis Glackin, currently UMS vice president of labor relations, was previously employed by another UMS subsidiary, Universal Logistics Insight Corp. Michael Vagts is director of labor and contractual relations. Don Taylor succeeded Phillips as president of Universal Intermodal and also served as vice president of Southern Counties.[6]

At the relevant times herein, the Respondent's employee-drivers were required to execute an "Agreement to Waive Participation in Class and Collective Actions" (the Agreement) as a term and condition of employment. The Agreement states, in pertinent part:

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[4] The Respondents failed to produce any subpoenaed agreements evidencing arms-length relationships between any of them. (Jt. Exh. 16-17; 181-82).

[5] Jt. Exh. 10(a); GC Exh. 3 at 80-81.

[6] The following managers moved throughout the ULH organization, but are admitted to have been statutory agents or supervisors at the relevant times herein: Vagts, Glackin, Phillips, Taylor, Tony Miles, and Joe Lugo.

In exchange for Universal Intermodal Services, Inc. ("Company") agreeing to hire you, you agree to bring any claim you may have against the Company on an individual basis only and not on behalf of or with any other present or former employee, and you expressly agree to waive any right you may have to bring or participate in any class or collective action, private attorney general action, group action, or to join with any other current or former employee in bringing a lawsuit or asserting claims against the Company or its current, future, and former parents, subsidiaries, affiliates, shareholders, members, directors, officers, employees, insurers, benefit plans, agents, and the predecessors, successors, and assigns of each of them. This waiver applies both during the time you are employed by the Company and after your employment ends. Signing this waiver does not change the at-will nature of your employment with the Company. By signing below, you acknowledge that this waiver is a condition of your employment with the Company.

You may choose to opt out of this condition of employment within your first 60 days of employment by delivering written notice of your decision to the Company via US mail, Attn: Qualifications and Onboarding 12341 East Nine Mile Road Warren, MI 48089 or by emailing filcupdate@goutsi.com. If you violate this agreement and/or the Company is required to enforce this waiver in court or in any other forum, you agree to pay the Company's reasonable attorneys' fees and costs associated with doing so. If any term of this waiver is unenforceable in any jurisdiction, such unenforceability shall not affect any other term of this waiver or render unenforceable such term in any other jurisdiction

B. The Compton and Slover Facilities

The Respondent's initial presence in Southern California began in 2005 with Universal Intermodal's operations out a facility in Colton, California (the Colton facility). At that time, the company utilized owner-operators. In October 2015, Universal Intermodal entered into a lease for the Compton facility from January 1, 2016 to December 31, 2017, and hired employee-drivers to operate the trucks out of that location.

In 2015, Universal Truckload started operating out of Fulton, California with approximately eight employee-drivers and 12 owner-operators. The employee-drivers used trucks owned by LGSI that had been supplied to Universal Intermodal. In 2017, Universal Truckload moved its operations to the Slover facility. By then, Universal Truckload employed two drivers and had eight owner-operators. Universal Trucking staff at the Slover facility included dispatchers and mechanics, which it shared with Universal Intermodal.

In 2017, Universal Intermodal moved its owner-operators from the Colton facility to the Slover facility. However, Compton facility based employee-drivers were permitted to pick up and drop off their trucks at the Slover facility if that location was closer to their residences.

From its Compton facility, Universal Intermodal provided intermodal services to and from the Ports of Los Angeles and Long Beach, railyards and third-party locations. Its employee-drivers were provided with company-owned trucks and equipment to pick up and move full and empty freight containers between the ports and its facility or client destinations. Universal Intermodal employees typically transported loads day-to-day from three sources: steamship, freight forwarders, and cargo owners.

Throughout 2019, Universal Intermodal utilized approximately 20 employee-drivers at the Compton facility and eight at the Slover facility.[7] The employee-drivers worked either the morning shift, which began at 6:00 a.m., or the night shift, which began at 5:00 p.m. They shared 39 white trucks owned by Universal Intermodal through its wholly-owned subsidiary, LGSI Equipment of Indiana LLC (LGSI). Employee-drivers generally worked over 60 hours per week, six days a week, 10 or more hours per day, and anywhere between two to five deliveries each shift.[8]

C. The Respondents Expand Operations in Southern California

By 2018, the Respondent aspired to be "larger player" in the Southern California market. In August 2018, Universal Intermodal paid $65 million to acquire Southern Counties, which operated with approximately 30 employee-drivers and 175-200 owner-operators.[9] In December 2018, Universal Intermodal paid approximately $60 million to acquire Container Connection and its approximately 200 owner-operator drivers.[10]

D. Universal Intermodal Blends Operations with Southern Counties

The Compton terminal suffered net losses of approximately $775,000 in 2016 and $1 million in 2017. Nevertheless, Universal Intermodal agreed to extend the Compton facility lease through December 31. In 2018, the facility incurred a net annual loss of approximately $1.2 million.[11] On February 25, Taylor asked Vagts about "the timeframe on closing this office out?" Vagts replied that he needed to discuss it with Glackin and Monahan. In an email the following day, Vagts informed Glackin and Monahan that Universal Intermodal was "considering closing their 9004 LA office. They have roughly 33 drivers and 5 office employees. This wouldn't qualify under the WARN Act correct, and if not, what are your thoughts on the proper timeframe and handling of the closing?"[12]

[7] R. Exh. 21.

[8] Romel Mallard's 10-12 hour estimate was contradicted by his Board affidavit describing his normal shift of 9.5 hours. (Tr. 359-60, 425- 26.) However, Jonathan Ledesma, Julio Carlos, Maurice Cummings, and Todd Ellis provided credible testimony regarding their work and hourly assignments, including an average of 10-12 hours worked per shift. (Tr. 462, 546-47, 570, 787, 826.)

[9] Taylor testified that the purpose of this acquisition was "to be a larger player in the LA Long Beach market. We needed a larger footprint, and we needed something outside of what our current operation was doing." In response to a leading question as to why the owner-operation relationships were an important part in that acquisition, Taylor stated, "Well, the owner-operator is its own business. So the relationship with the Company is contingent on the availability of freight, and whether or not they want to do it." (Tr. 1127.) In response to another leading question as to Universal Intermodal's intentions going forward, Taylor vaguely, and without documentary substantiation, stated that "we were making the effort to go to an owner-operator model" in Southern California. (Tr. 1128.)

[10] Similarly, Universal Intermodal's acquired Container Connection because it was one of the "larger drayage providers in the market that was willing to sell," indicates the latter's owner-operator workforce was merely incidental to the purchase.

[11] Mallard testified that a high-level West Coast executive told a group of employees in 2018 that the company was "bleeding out." (Tr. 435-36.)

[12] The reference to 9004 was an internal company code for the Compton facility. (Tr. 84.) WARN was as reference to the Worker Adjustment and Retraining Notification Act. See 29 U.S.C. §§ 2101-

On March 6, Vagts drafted a letter informing Compton facility employees that Universal Intermodal would cease operations at that facility on March 30. Employees were advised "to explore new employment opportunities within Universal or outside the organization."[13] However, then-President Philips and Taylor decided not to close the Compton facility and, instead, implemented certain operational changes. Universal Intermodal dispatchers were terminated and replaced by Southern Counties dispatchers. It also ceased making spot deliveries and its drivers were assigned by Southern Counties dispatchers to transport excess Southern Counties freight.

Once the employees transported loads to and from clients of Southern Counties and Universal Intermodal, they were dispatched to transport loads to and from the ports for the remainder of their shift. While they were managed and directed by Southern Counties, Universal Intermodal employee-drivers continued to be paid by Universal Intermodal.[14]

The container loads at the Ports of Los Angeles and Long Beach were typically busiest before the holidays and slowed down around Christmas, and again around the Chinese New Year. Universal Intermodal maintained the continuity of employee work hours by providing them with alternative work, e.g., transporting loads to and from rail yards otherwise done by Universal Transport employee-drivers and owner-operators.

Universal Intermodal kept separate accounting records documenting Universal Intermodal and Southern Counties internal revenue data for their respective facilities. However, the Compton facility's 2019 revenue did not distinguish between revenue brought in by Southern Counties drivers or Universal Intermodal drivers. It merely listed one lump sum of "direct revenue" for the Compton facility.[15]

E. The Organizing Campaign

During the late summer and early fall of 2019, the Union conducted meetings, distributed Union vests to Universal Intermodal employees, hand billed, and deployed employee supporters to solicit coworkers both inside and outside the Compton and Slover facilities about the benefits of unionizing. On November 2, the Union began collecting signed union authorization cards. On that day, Universal Intermodal employees Mallard, Ledesma, David Johnson, Jose Torres and Maurice Cummings signed cards. On November 3, employees Carlos, Ellis, and Kevin Poullard signed cards.

2109 (R. Exh. 14.)

[13] The draft was addressed to Compton facility employees, although it referred to "All Rancho Dominguez Universal Intermodal Employees." (R. Exh. 13.)

[14] This finding is based on the credible and undisputed testimony of Mallard, Ledesma and Ellis (Tr. 351-54, 464-65, 822.)

[15] Again, although subpoenaed, no agreements were produced by Universal Intermodal showing any separation between Universal Intermodal, Southern Counties and Universal Truckload. (Jt. Exh. 14-16; Tr. 121-22; 160-61; 1222-24.)

On or about November 8, in Case 21-RC-251460, the Union filed a petition to represent 27 full-time and regular part-time employees at the Compton and Slover facilities. On November 18, the parties entered into a Stipulated Election Agreement that included the 20 employee-drivers who were dispatched out of the Compton facility, and the 8 drivers who parked their trucks at the Slover facility:

> All full-time and regular part-time port drivers employed by Universal Intermodal working or dispatched out of Universal Intermodal's facility currently located at 2035 Vista Bella Way, Compton, California. Excluded: all other employees, dispatchers, mechanics, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.[16]

After filing of the petition, Union organizers Miguel Cubillos and Santos Castaneda contacted employee-drivers by telephone and at tents set up at the entrances to both the Compton and Slover facilities, and within plain view of their surveillance systems. Under the tents were tables with large banners and signs displaying the Union's logo or large text saying "Union – Yes." There, the organizers provided employees with coffee, Union vests with Union logos in the front and back, and Union signs for them to place inside their cars. Some employee-drivers, including Carlos and Torres, openly displayed pro-Union signs inside their cars in the Slover facility parking lot shared by Universal Intermodal and Universal Trucking drivers.

Many Universal Intermodal employees openly supported the Union's campaign, wearing the Union vests at work, and appearing on a Union flyer distributed at both the Compton and Slover facilities. Union leaders in the proposed unit, including Mallard and Ledesma, spoke to co-workers about the Union and voiced their support of the Union during company held anti-Union meetings.

Since Universal Truckload drivers shared the Slover facility with Universal Intermodal drivers, they were directly exposed to the Union's campaign throughout November. During this time, about eight Universal Truckload employee-drivers spoke to Universal Intermodal drivers and Union representatives, including Cubillos and Castaneda, about the Union. The discussions occurred in at the Union's tent in front of the facility, in clear view of the Slover facility's management and surveillance cameras. Some also expressed interest in unionizing of Universal Truckload by giving their telephone numbers to the Union organizers.[17]

Since the Fontana facility was down the street from the Slover facility, several Roadrunner drivers, including Desmond Gibson, stopped by to speak to Castaneda about the organizing campaign. These discussions, at the Union's tent in front of the Slover facility, were visible to management and the facility's surveillance system. These drivers connected the Union with several other Roadrunner drivers, including Michael Washington and Freddie Hollings, who provided the Union with contact information for the remaining Roadrunner employee drivers. Discussions continued among the employees themselves about the Union several times a week.

[16] Universal Intermodal opposed the inclusion of Slover facility drivers in the Unit unless they were dispatched by the Compton facility. (Tr. 948.)

[17] It is undisputed that the Union openly and visibly engaged with employee-drivers in front of the Compton and Slover facilities. (Tr. 553-56, 596-99, 615, 620-23, 658-60, 757, 794.)

Washington and Gibson also spoke to terminal management about the Union. Washington asked the terminal manager, Xochitl Becerra, in November 2019 about the Union. She told him, "Mr. Washington, you know, it's not going to happen." After the election, Gibson asked Becerra and Ivan Garcia, another manager, about the Union and how that would impact Roadrunner employees. In response, Garcia and Becerra denied any knowledge about that.[18]

F. The Respondents' Pre-Election Activities

Nationwide, approximately 45% of the 5,800 employees in ULH operating subsidiaries are represented by unions. The Union, with whom ULH has held bargaining relationships for over 25 years, represents approximately 69% of those employees. In this instance, however, Universal Intermodal deployed a labor consultant, Kirk Cummings (Cummings), beginning on November 12, the day after the parties entered into a stipulated election agreement.[19] The Respondents also brought in a veteran of the ULH organization, Joe Lugo, to run the facility.

On November 12, Cummings met with the drivers who parked their trucks at the Slover facility. He also conducted four meetings at the Compton facility on both the morning and night shifts from November 13 through December 3. During these meetings, Cummings used PowerPoint presentations to convey the notion that employees could end up with less than they were making if they brought in the Union. He also commented on the potential for job loss if the Union prevailed in the election.[20] Employees resisted these efforts and some, including Mallard and Ledesma, openly spoke up in support of the Union.[21]

1. Cummings November 12 Meeting with Poullard

Prior to Cummings' November 12 meeting at the Slover facility, he spoke to Poullard as he completed his shift. Cummings told Poullard that he was meeting with employees that night and asked Poullard if he had "a second to attend the meeting." He did not describe it as mandatory to attend. When Poullard declined, Cummings asked Poullard if he was "aware of the Union" and "how did [he] feel about the Union?" Despite having signed a Union authorization card on November 2, Poullard lied and told Cummings that he did not know about the Union. He then left the facility without attending Cummings' meeting. Poullard was not disciplined for refusing to attend the meeting. On November 13, however, Poullard recounted the experience to

[18] Again, it is undisputed that several Roadrunner employees expressed interest in unionization and appeared at the Slover facility during the campaign in view of the surveillance system. Regarding the statements by Becerra and Garcia, Washington and Gibson provided credible, undisputed versions of those conversations. (Tr. 555-56, 596-99, 621-24, 734-36, 792-94, 908-16, 1064-65, 1309.)

[19] Universal Intermodal Services admits that Cummings was its labor relations agent, within the meaning of Section 2(13) of the Act, from November 11 until December 13.

[20] Ellis credibly testified that in one of these meetings on November 13, Cummings warned of the dire consequences if employees brought in the Union: "you guys better be careful. You're walking a – you're walking on a -- on a – you're walking on very shaky ground. It's only 27 of you. Who's to say they won't just get rid of you guys." (Tr. 833-36.)

[21] Cummings did not refute the credible testimony of Mallard, Ledesma, Ellis and Johnson regarding his comments at these meetings. (GC Exh. 26; Tr. 378-79, 471-75, 834-41, 937-38.)

Cubillos at the Union's tent outside of the Slover facility. Cubillos replied that the person who spoke to him "wasn't from Universal, that he was a union buster."[22]

On November 13, Cummings conducted his first set of meetings met with the Compton facility's employee-drivers. In one of those meetings, after employees expressed their work complaints, Cummings said he "would do us a favor and get on a redeye flight back to Detroit, and he would sit down with the CEO of Universal and" report those issues to him.[23] During his shift meeting with Cummings that day, however, Ledesma told Cummings that he spoke for the majority of the drivers and that they already decided they would be voting for the Union. Ledesma would go on to speak as a strong advocate and leader of the employee effort to unionize. At a meeting on November 18, Cummings asked drivers if any were Spanish speakers as his associate would hold a meeting in Spanish the following day. When one driver said that all of the drivers spoke Spanish, and that it would save time for the drivers to meet the following day, Ledesma agreed and proceeded to lead all but two of his coworkers out of the meeting. Ledesma was not disciplined for this walk-out.[24]

2. Lugo's November 18 Meeting

Prior to November 18, Lugo was employed by Central Transport, a Universal Intermodal affiliate that provided it with administrative, legal and related support. On November 18, he appeared in front of the Compton facility office and introduced himself to a group of employee drivers as the manager of the Compton facility. Lugo told them that he was there to address any problems employees were having, and that if they had any problems with their trucks, they should report those issues directly to him, and "he'd call the mechanic himself and get it straightened out if he had to." This was a departure from past practice, as the employees had never had a manager directly ask them about problems they were having at work or provide them with personal contact information. Rather, prior to the Union campaign, any problems they had would be reported to Southern Counties dispatchers.

As employees then began detailing their complaints, Lugo wrote down this information on a pad. Lugo also provided his direct contact information, including his personal cell number, office number, and email, to employees and told them that if they "need anything or [need something] done promptly, bring the problem directly to him. To give him a call."[25]

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[22] Although Poullard did not remember Cummings 's name, I found his testimony credible, and corroborated by Cubillos, and Cummings' name was on the sign-in sheet for the meeting that day. (Tr. 616-19, 968-71, 998-99, 1001, 1402-03; GC Exh. 7, 26.). Cummings, on the other hand, offered only a general denial that he ever asked employees about their union activities or feelings for the Union. (Tr. 1396.)

[23] This finding is based on Ellis' credible and detailed testimony. (Tr. 837.)

[24] Universal Intermodal's knowledge of Ledesma's activities is not disputed. (Tr. 469-79, 551-52.)

[25] I base this finding on the credible and detailed testimony of Mallard and Ellis. (Tr. 370-72, 417, 836-37, 842-45, 942.) Lugo, on the other hand, provided only general and conclusory testimony denying such testimony in response to leading questions about his offers to address employees' complaints. (Tr. 1338-42.) Additionally, he was evasive about when he actually started at Universal Intermodal, and incorrectly asserted that mechanics were available at the Compton facility. (Tr. 1213-15, 1346-47; GC Exh. 31 at 534.)

3. Cummings November 18 Meeting

During Cummings November 18 meeting, he asked the employee-drivers if any of them spoke Spanish speakers as his associate would hold a meeting in Spanish the following day. When one driver said that all of the drivers spoke Spanish, and that it would save time for the drivers to meet the following day, Ledesma agreed and proceeded to lead all but two of his coworkers out of the meeting. Ledesma was not disciplined for this walk-out.[26]

4. The November 25 Meeting

Prior to November 26, Cummings' meetings with employees were not mandatory. That morning, however, Lugo came into a third shift meeting and told the employees that attendance at these meetings was mandatory. Prior to that time, employees were not disciplined for refusing to attend or walk out of meetings with Cummings.[27] At the meeting on November 25, an employee-driver asked Cummings if Universal Intermodal would discuss issues if the Universal Intermodal employees did not support the Union. Mallard commented that this was unlikely as the employees had met with Universal Intermodal the previous year to discuss workplace issues and nothing came from it. Mallard then stood up to elaborate but Cummings told Mallard that he did not want him to speak. Mallard responded that "if I can't talk, then I can't listen," and he proceeded to leave the meeting and walk to his truck.[28]

After Cummings finished speaking during the November 25, meeting, Lugo addressed the employees. After reminding employees not to take long lunches, Lugo informed the employees that he was working on "new maintenance sheets" for employees to use, then reiterated that they should bring their issues and complaints about the trucks to him, and that those complaints would be addressed as soon as possible. Lugo explicitly told employees, that "he'd even called the mechanic himself personally to get him to handle what he needed him to handle, to fix whatever he needed them to fix."[29]

[26] Universal Intermodal's knowledge of Ledesma's activities is not disputed. (Tr. 469-79, 551-52.)

[27] Lugo and Cummings provided vague testimony as to their "understanding" that the meetings were mandatory because the employees "were on the clock." However, the fairly consistent, credible, and undisputed testimony of Mallard, Ledesma, Poullard, Ellis, and Johnson established that employees were never told prior to November 25 by dispatchers, Lugo or anyone else that the meetings with Cummings were mandatory – until Cummings brought in Lugo on November 26 to tell them that attendance was mandatory. The instance in which Spanish-only speaking drivers left after being told they could attend a Spanish language session the next day is not inconsistent with their testimony. (Tr. 373-80; 475-81; 834-39; 939-40, 970, 1342-43, 1396; GC Exh. 6.)

[28] Mallard's credible version of this exchange was corroborated by Johnson. Cummings did not dispute their version of that event, nor did he testify that Mallard was loud and/or disruptive in any way. In fact, Cummings conceded that Mallard's conduct did not bother him and was common behavior during anti-union presentations. (Tr. 379-83, 940-94, 1397-1402.)

[29] I based this finding on the credible and undisputed testimony of Mallard and Johnson, although the latter mistook Vagts for Lugo. (Tr. 328, 382-83, 941.)

G. Universal Intermodal Suspends and Subsequently Terminates Ledesma

Ledesma, a morning shift driver based at the Compton facility, began working for Universal Intermodal in July 2018. Despite living full-time in Phoenix, Arizona in 2018, Ledesma applied to work at the Compton facility. When he applied, Ledesma possessed two Commercial Driver's Licenses (CDL), one from California, which issued on March 17, 2016 and expired on July 31, 2020, and another from Arizona, which issued on March 26, 2018 and expired on July 31, 2023.[30] On his job application, he listed his father's Los Angeles address and his California CDL license.[31]

After being hired, Ledesma generally transported loads within Southern California. Once or twice a week, however, he transported loads to Arizona and Nevada. Throughout his tenure with Universal Intermodal, Ledesma received no discipline or corrective action. He did have issues on two occasions regarding his CDL. The first instance involved his California CDL. In October 2018, Ledesma's company fuel card was declined when he attempt to fill up his truck. He called the Compton facility dispatcher and was informed that his California CDL had been suspended and he should contact the corporate office in Michigan. He called and was informed that the card was put on hold when his California license was suspended because he also had an active out-of-state license. After providing the corporate employee with his Arizona CDL license information, Ledesma was told that everything was fine and his fuel card was reactivated.

The second incident occurred one day in May, when a Southern Counties dispatcher told Ledesma that he was taken off his shift because his Arizona license had been suspended. Later that day, Ledesma went to court, resolved the issue, and his Arizona CDL was immediately reinstated. Ledesma informed a Southern Counties administrator of this development and he was placed back on the schedule the following day. At no point did a Universal Intermodal or Southern Counties representative ever tell Ledesma or any other employee that it was a problem to drive company trucks with an out-of-state CDL license, as opposed to a California CDL.[32]

As previously noted, Ledesma was an outspoken advocate for the Union and leader of the organizing campaign. Ledesma also openly wore his Union vest while at work and strongly disagreed with Cummings anti-union comments November and early December. Around mid-November, in the midst of the Union campaign, Universal Intermodal was notified by the California Highway Patrol (CHP) that the Compton facility would undergo a "Basic Inspection of Terminal" (BIT). A basic inspection entails inspection of a facility's vehicles, and related

[30] Having listed a Los Angeles residence when he applied, Ledesma complied with California's vehicle Code Sections 1205 and 516 that essentially required drivers who resided in California to hold a valid California CDL license. A valid CDL license was a condition of employment. (Tr. 454.) However, there is no evidence that the company precluded employees from residing out of state.

[31] There is no written or other announced policy by Universal Intermodal that required Ledesma, who continued to live part-time in California and drive regular interstate loads for Universal Intermodal, to continuously maintain a California CDL, as opposed to an Arizona CDL. (Tr. 384-87, 445-47, 453-58; Jt. Exh. 4(a) at 20-21, 48-49.)

[32] These findings are based on Ledesma's credible and unrefuted testimony regarding his conversations with company representatives on both occasions regarding the adequacy of his Arizona CDL license. (Tr. 454-458, 530-31.)

maintenance and driver records to determine compliance with Motor Carrier Safety regulations for the maintenance of commercial motor vehicles.[33]

Prior to the inspection, Phillip Canaday, a safety manager employed by UMS, reviewed records related to the Compton facility, including drivers' files. During Canaday's review, he noticed that Ledesma had an Arizona CDL. Canaday then proceeded to inform Lugo that California Vehicle Code Sections 12505 and 516 required drivers who reside in California to hold valid California CDL licenses. Although Ledesma was carrying one valid CDL license, he told Lugo that Ledesma was in violation of federal law.[34]

On November 25, Lugo asked to meet with Ledesma as the latter clocked-in to work, and the two of them then met with a safety manager. The safety manager informed Ledesma that Universal Intermodal discovered that he did not possess a California CDL while preparing for an upcoming BIT inspection, and since he was driving in violation of federal regulations, he was suspended. Ledesma replied that he was never told that he needed to maintain a California CDL, and that the company should have notified him to allow him a few days to reinstate his California CDL. At this point, the safety manager told him that he was getting notice now.[35]

After his suspension, Ledesma immediately started the process to obtain a California CDL. However, two days later, on November 27, before he was able to fully reinstate his California CDL, Ledesma was informed by Lugo that he was being terminated for violating "Federal Motor Carrier Safety Regulations (FMCSR) licensing requirements." Copies of Ledesma's termination letter were sent to Richard Silverwood and Dennis Glackin, both high ranking officials of ULH. On December 2, Ledesma's California CDL was reinstated and he was eligible for rehire in accordance with Universal Intermodal policy.[36] On that same day, he

[33] CHP Form 800H explains the BIT program as follows: "Terminal inspections have been conducted by the CHP since 1965 as a tool to determine if motor carriers are complying with Motor Carrier Safety regulations, particularly with regard to the legal requirement to maintain commercial motor vehicles according to a scheduled maintenance (preventive maintenance) program. The CHP's role is to determine whether carriers' selected maintenance schedules are adequate to prevent collisions or mechanical breakdowns involving the vehicles, and all required maintenance and driver records are prepared and retained as required by law." The driver records mentioned, however, relate to the maintenance and operations of the vehicles, and do not reference driver's individual files, licenses or qualifications. https://www.chp.ca.gov/home/forms

[34] Canaday's speculation that the BIT inspection would have resulted in an unsatisfactory rating for the Compton facility was not corroborated by credible evidence. (Tr. 1373.) In fact, the lack of *any* individual driver licensing and address information on the Form CHP 800H recorded by the CHP inspector indicates otherwise. The inspection form for every vehicle inspected contained only blank spaces for the following: Driver, Licensed, State, Date of Birth, CoDriver, Licensed, State. (Tr. 1361-72; R. Exh. 29-31.)

[35] Lugo did not refute Ledesma's credible rendition of this meeting. (Tr. 481-84.) In any event, Canaday testified that the violations related to California Vehicle Code Secs. 12505 and 516, not federal regulations. Moreover, his assertion that Ledesma was in violation of federal law prohibiting drivers from carrying two different state CDLs at one time, was baseless – Ledesma had only one CDL license at the time. (R Exh. 29-30.; Tr. 1365-75.)

[36] Canaday confirmed that Ledesma was, in any event, eligible for rehire once he reinstated his California CDL. (Jt. Exh. 4(a); Tr. 1373-78, 1384-85.)

tried to contact Lugo to inform him that he had obtained a valid California CDL and was eligible for rehire. Lugo, however, did not return the call.[37]

The Compton CHP inspection began one day later, on December 3. It lasted two days and Universal Intermodal passed the inspection. The report, however, contained no indication that driver records, much less Ledesma's CDL license, were reviewed as part of the inspection.[38]

H. The Respondent Terminates Mallard

Mallard, a night-shift driver, was the other leading employee organizer at the Compton facility. During his tenure with Universal Intermodal, Mallard was never disciplined.[39] He appeared in Union literature, wore a Union vest, and attended Union meetings. Mallard also openly wore his Union vest while at work.[40] In Cummings' meetings with Unit employees in November and early December, Mallard regularly voiced his Union support to counter Cummings' negative points about the Union.

As noted, Mallard was outspoken at the meeting with Cummings on November 25. He derided Cummings' and, when Cummings essentially told him to shut up, he walked out of the meeting. The next day, November 26, Lugo called Mallard to inform him that he was terminated for insubordination. Lugo did not provide any details. Immediately after his call with Lugo, Mallard received a call from an unnamed safety manager, who introduced himself as being a manager at Southern Counties, informing Mallard that he was terminated. No reason was given. The manager also informed Mallard that he would get his last check in the next couple of days. Mallard subsequently received a letter by certified mail, dated November 26, stating that he was discharged, effective same date, for insubordination. Richard Silverwood and Glackin were copied on the letter. No further explanation was provided, except for a statement that the company would "respond to reference checks from prospective employers with simply your dates of employment and position held."[41]

I. Universal Intermodal Expands Its Footprint in Southern California

The Compton facility had a profit of $106,000 in 2019. In addition, the Respondents' intermodal revenues "increased $28.4 million to $112.3 million in the fourth quarter of 2019, up

[37] Again, the Respondents did not dispute Ledesma's version of these events. Moreover, Glackin conceded that it was unprecedented for him to be copied on a termination letter. He also confirmed that there was no investigation into the circumstances of Ledesma's termination. (Jt. Exh. 4(b); Tr. 107-13, 223-34, 484-87.) Significantly, Universal Intermodal did not present evidence of any other instance where an employee was terminated for similar reasons.

[38] The report made no mention of such records being inspected. (R Exh. 31 at 5, 8-16; Tr. 1379-84). As Respondents' counsel noted, the results of the inspection were "really about the trucks." (Tr. 1366.)

[39] Glackin confirmed that Mallard's personnel records were devoid of any disciplinary problems. (Jt. Exh. 5(a); Tr. 99-107, 384.)

[40] Mallard's pro-union activities are not disputed. (Tr. 368-83.)

[41] Lugo did not dispute Mallard's version of the November 26 telephone call. Nor did he indicate that any investigation was conducted. (Jt. Exh. 5(b); Tr. 383.) The Respondent's position statement, however, specified that Mallard's disruptive and loud behavior, as well as his storming out of the mandatory meeting, amounted to gross insubordination. (GC Exh. 31).

from $83.9 million during the same period" in 2018," and "$139.2 million to $390.3 million during 2019, up from $251.1 million during the same period" in 2018.[42] Historically, December was the busiest month for Compton facility employees.[43]

In November, Universal Intermodal was also expanding its Southern California operations. That month, it paid $51 million to acquire Roadrunner and its approximately 500 owner-operators, including 20-25 owner-operators based out of the Fontana facility. Roadrunner's Fontana facility, which Phillips and Taylor immediately took control over the operations of, employed several managers and supervisors, and approximately 26 employee drivers. In early December, those employees were converted to Universal Intermodal employees.[44]

The Roadrunner purchase was consistent with the Respondents' preference for owner-operators, especially after Governor Gavin Newsome signed California Assembly Bill No. 5 into law on September 18, with an effective date of January 1, 2020. The bill amended California Labor Code § 2750.5 relating to the definitions of employees and independent-contractors. The acquisition also coincided with the looming expiration of the Compton facility lease on December 31, which did not have a renewal provision. By the end of November, Lugo posted the following notice to Compton facility employees:

> As you are all aware, Universal's lease on the Compton terminal expires on 12/31/2019, and it will not be renewed. While the company is considering its options, no decision has been made regarding the potential relocation of the Compton operations, nor has a new location been determined.
>
> As soon as more information becomes available to me, I will share that with you.

[42] Jt. Exh. 10(b) at 638; GC Exh. 3 at 38.

[43] The Respondents presented conclusory statements and news articles relating to weakness in the intermodal sector, but failed to present credible evidence directly supporting the claim that work was slowing down. To the contrary, Universal Intermodal's records indicated that December was the busiest month three years running. (R. Exh. 21.) Moreover, the Respondents contend that the viability of the Compton facility depended on the ability of Southern Counties to provide it with loads. However, I do not credit Taylor's testimony that Southern Counties loads decreased approximately 30% from October to November and another 20% from November to December. Purportedly refreshing his recollection from a document that was excluded from the record, it was clear that Taylor was simply reading from an inadmissible document. (Tr. 1137-59.)

[44] Taylor and Phillips testified that they were concerned that allowing employee drivers to remain would cause many independent contractors to look for work elsewhere on the belief that employee-drivers were getting priority. Again, this was an unsubstantiated claim contradicted by the Respondents' uneventful operation of combined employee-driver/owner-operator workforces. (Tr. 87-97, 729-32, 903-06, 995-96, 1159-62, 1166-68, 1228-29, 1239-44, 1277-78, 1290, 1307-11; 1350-52; GC Exh. 11(c), 18(b), 23, 35, 56.) Moreover, the claim that the 2.6% profit margin for 2019 failed to meet ULH's target margin of 10% for its intermodal division, was self-serving and contradicted by the fact that it kept the Compton facility open in 2017 and 2018, years when it lost money. (R. Exh. 18; Tr. 1166, 1242-44, 1261-62, 1290.) Similarly, the Respondents' alleged concerns based on an industry report that exports shipped through the Port of Los Angeles declined by 2.7% in September due to current trade tensions with China is negated by its continuing acquisition of other Southern California terminals.

Shortly after the notice was posted, Lugo and the two dispatchers told Compton and Slover facility employees that the Respondents were going to relocate them to the Southern Counties Compton facility or another facility while the Respondents searched for a more permanent location.[45]

J. The Union Prevails in the Representation Election

On December 4, a majority of the employee-drivers voted to be represented by the Union. On December 11, the Company filed objections to the election. The Regional Director ordered a hearing on one of the objections, which the Company later withdrew. On January 8, 2020, the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the Unit):

> Included: All full-time and regular part-time port drivers employed by the Employer working or dispatched out of the Employer's facility currently located at 2035 Vista Bella Way, Compton, California.
>
> Excluded: All other employees, dispatchers, mechanics, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

K. Universal Intermodal Begins Eliminating Employee Hours

Immediately after Universal Intermodal lost the election, Phillips and Taylor decided to close the Compton facility and lay off the employee-drivers.[46] They did not, however, notify the Board of their intentions. Prior to the election, the 28 Compton and Slover facility employee drivers were assigned four to five loads per shift, and the average total weekly hours performed by Unit employees was approximately 945. During the two weeks following the election, however, the employees were assigned only one or two loads – a decrease of approximately four to five hours of work per shift. That amounted to total hours assigned to unit employees during the weeks of December 8 and 15 of approximately 688 and 475, respectively.[47]

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[45] I base these findings on the credible testimony of Ellis, Torres and Johnson (Tr. 669-77, 857-58, 949.) Lugo and Phillips, on the other hand, offered evasive, shifting and contradictory testimony regarding Universal Intermodal's intention to relocate Unit employees to an alternative facility. Lugo denied knowing about the company's search for an alternative facility, yet his name was on the posting that such a search was taking place. Phillips also denied that such a search took place, but the documentary evidence proved otherwise. (Tr. 1310, 1352-53; Jt. Exh. 6(a)-(b).)

[46] Julie Gutman Dickinson, Union counsel, testified credibly and irrefutably that the Respondents' labor counsel, John Ferrer, initially asserted during effects bargaining in March 2020 that Universal Intermodal had been considering closure since March 2019. However, when pressed as to why Phillips and Taylor decided to lay off employee-drivers two days after the election, Ferrer provided no documentation to elaborate on the otherwise vague and unconvincing testimony by Phillips and Taylor as to their reasons for, and the timing of, their decision. (Tr. 87-97, 995-97, 1159-62, 1228-29, 1239-44, 1350-55; GC Exh. 31 at 509.)

[47] Again, the Respondents claim that the work decreased during this period was inconsistent with by direct evidence. To the contrary, ULH's February 6, 2020 press release reported positive results for 2019 intermodal services fourth quarter revenue: "increased $28.4 million to $112.3 million in the fourth quarter 2019, up from $83.9 million during the same period" in 2018. $33.7 million was from acquired

After the election, instead of picking up loads at the ports and delivering them directly to clients, Unit employees were directed to pick up loads from the port and deliver them to the Franco storage lot or another lot, all near the ports. At the Franco lot, Southern Counties and Container Connection owner-operators picked up the containers dropped off by Unit employees for delivery. Southern Counties dispatchers then instructed Unit employees to drive without a load back to their home facility. By December 19, the Compton and Slover night shift Unit drivers were told by dispatchers that there would be no night shift work for the next two weeks, and they needed to report to work during the morning shift.[48]

L. The Compton Facility Lease is Not Renewed

On December 6, Phillips and Taylor decided not to renew the Compton facility lease, close the terminal, and layoff its Unit employees.[49] Phillips also decided to layoff the Slover facility's employee-drivers, although that facility remained operational.[50] On December 16, the employee-drivers at the Compton facility were notified of the Compton facility's closure:

> Dear Driver,
>
> You were previously made aware by both a posting at the facility on November 22, 2019 and in a meeting on November 25, 2019 that Universal Intermodal Services' lease on the Compton terminal located at 2035 Vista Bella Way, Compton, CA expires on December 31, 2019. The Company has not found a suitable location to relocate the Compton operations. The lease expiration combined with a weakening in the truckload and intermodal sectors has forced Universal Intermodal Services to make the painful decision to discontinue operations in Compton, CA. concocted

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companies. During that quarter, intermodal loads increased by 42,801 and average revenue per load increased by 3.9% over the year before. (Jt. Exh. 10(b) at 2.) For the year, "[i]ntermodal revenues increased 139.2 million to $390.3 million during 2019, up from $251.1 million during the same period" in 2018. " During 2019, Universal moved 671,184 intermodal loads compared to 455,752 in 2018, an increase of 47.3%, while also increasing its average operating revenue per load, excluding fuel surcharges, by 5.2%." (GC Exh. 3 at 38.) Moreover, as previously noted, December was historically the busiest month (Jt. Exh. 7 at 304-602; GC Exh. 21, 27.)

[48] The transfer of Unit employee work to Southern Counties and Container Connection owner-operators was not disputed. (GC Exh. 11, 14-15, 22, 27(f), 31-32; Tr. 557-64, 664-69; 795-97, 853-56, 943-47, 1078-79.)

[49] The Respondents closed several terminals during the preceding 10 year period. None were located in the Southern California market: 2011 – Birmingham, Alabama (Tr. 1170); 2012 – Atlanta, Georgia (Tr. 1172.); 2019 – Cincinnati, Ohio (Tr. 1292, 1298.), Jacksonville, Florida (Tr. 1293, 1300.), Charlotte, North Carolina (Tr. 1293-95.) None were any of these terminals were making a profit when they closed.

[50] In addition to the baseless rationale regarding the revenue factor, Phillips and Taylor relied on the vague and unsubstantiated claim that the company decided not to mix employee drivers with owner-operators at other facilities. (Tr. 87-97, 1166-68, 1228-29, 1243-44; 1277-78, 1290; 1307-08.) Moreover, Universal Intermodal hired employee-drivers after the layoffs to operate its trucks in the same area that had been covered by the Compton terminal. (GC Exh. 31, Exh. D; Tr. 1163.) After investing $150 million to establish its presence at the Ports of Los Angeles and Long Beach, this is not surprising. (Tr. 1183.)

> Included with this letter is your final paycheck, including any other monies owed you. Please direct all questions to Michael Vagts, at mvagts@universallogistics.com or 586.920.0259.

Shortly thereafter, Universal Truckload and Roadrunner employees were also laid off. Universal Truckload employees were notified by letter from "Universal Management," dated December 18:

> Soft freight conditions in 2019 have necessitated that we evaluate our current staffing levels heading into the New Year 2020, as a result with much consideration, we regret to inform you that Universal Truckload, Inc. is reducing all company driver positions effective Friday, December 20, 2019.[51] Final pay will be processed in accordance to Friday, December 20.2019.
>
> If you have any questions or want additional information concerning this matter. Please contact your local management or Michael Vagts. Sr. HR Manager, at 586-920-0100.[52]

Roadrunners employee-drivers were called into a meeting with Garcia and laid-off. During this meeting, the Roadrunner employees were also informed that they were eligible to return to work for Roadrunner if they got their own trucks. As a condition Roadrunner employees were also required to sign severance agreements if they wanted to receive their final paycheck.[53]

M. The Respondents Transfers Unit Work to Owner-Operators and Hires Employee-Drivers

After the Compton facility closed, Universal Intermodal retained its trucks, chassis, and office equipment. In addition, Roadrunner's Fontana terminal eventually merged with the Slover facility in 2020. The work previously performed by Unit employees, however, was transferred to Southern Counties owner-operators.[54] The Respondents did publicize job openings on December 20 and 27, and January 3, 2020, for employee-drivers at a facility located at 550 S. Alameda Street, about four miles north of the Compton facility. Unit employees, however, were not offered job opportunities at that or any facility.[55]

[51] The circumstances regarding the Universal Truckload and Roadrunner layoffs are not disputed. (Jt. Exh. 16-18. Tr. 189, 1167-69, 1182-83, 1243-44, 1290, 1309-11.)

[52] At the hearing, I granted the General Counsel's motion for evidentiary sanctions for failing to provide the financial documents listed in the subpoena duces tecum served on Universal Trucking. Accordingly, based on the credible testimony of employees Leon Duran and Gibson, I find that the level of work of Universal Truckload and Roadrunner was normal in the period leading to the Respondents' sudden decision to layoff the employees at those companies in December. (Tr. 599-600, 920.)

[53] This finding is based on credible and testimony by Gibson and Washington. (Tr. 739-41, 916-19.)

[54] Jt. Exh. 19(a), (f)-(g)); GC Exh. 32.

[55] The employment applications for the S. Alameda Street facility were the same ones provided to Universal Intermodal employees onboarded by Brooke Hartwell, a recruiter with Universal Dedicated. Universal Dedicated is another UAL division. (Tr. 863-72, 964, 1477-87; GC Exh. 16-20.)

N. The Union's Request to Bargain

By letter, dated January 18, 2020, Gutman-Dickinson accused Universal Intermodal of acting unlawfully and insisted that it bargain over Unit employees' terms and conditions of employment, as well as the effects of the changes. She also requested that Universal Intermodal and Southern Counties furnish the Union by January 31, 2020 with relevant and necessary information needed to prepare for bargaining.

The information requested covered the a period of one year and included, in pertinent part: Request 1 – a list of Unit employees and specific personnel and wage and hour records; Request 6 – employer policies and procedures; Request 7 – health and safety reports or logs; Request 8 – disciplinary notices, warnings or records; Request 9 – individual employee agreements; Request 10 – employee evaluations for the previous five years; and Request 11 – records relating to the layoff of unit employees in December, including information corporate structure, financial records, leases and related records, audits and valuation reports, records relating to the December layoffs Unit employees, and hiring-related records regarding new hiring of employee-drivers or owner-operators since October 2018 (the information request).

On January 31, 2020, Ferrer objected to the information request on several grounds. Regarding Request 1, he asserted that the information was irrelevant and overly broad. Gutman Dickinson replied that the information was presumptively relevant and, in any event, admitted by the company as they provided the Union with other responsive documents" to Request 1.

Ferrer objected to Requests 6, 7, and 8 on the grounds that they were "wholly unrelated to the closure of the Compton terminal or the effects of the closure." Gutman Dickinson responded that "the Union is the recognized exclusive bargaining representative for the terminated employees and [the information requested in Requests 6, 7, and 8] are presumptively relevant."

In response to Request 9, Ferrer represented that the Respondent did not possess responsive documents. Gutman Dickinson disputed that representation because she already had a copy of the employee "Agreement to Waive Participation in Class and Collective Actions."

Finally, Ferrer objected to Request 11 on the grounds that the information sought "confidential and proprietary business information, such as financial statements, customer lists, and customer contracts." Gutman Dickinson explained to Ferrer, in writing and over the telephone, that the requested documents were directly related to the Respondents' decision to layoff and transfer the work of, the Unit employees. The Union offered to enter into a confidentiality agreement, in writing and in person. The Respondents, however, did not respond to that offer, much less offer any alternatives. Nor did they ever request that the Union clarify any of the outstanding requests and failed to offer any alternative proposal to any of the outstanding requests.

Ferrer also refused to bargain over the decision to close the Compton facility and lay off Unit employees, but agreed to bargain over the effects of the Compton facility's closure.[56] He also disputed the Union's allegations, stating in pertinent part:

> Universal is aware that NLRB Region 21 recently certified the Union as the exclusive bargaining representative for the port drivers formerly employed by the Company at its Compton terminal. As the Union is aware, prior to the Union's certification, the Company made the difficult decision to close the Compton terminal and lay off the port drivers. Contrary to the Union's allegations, the Company made this decision for legitimate business reasons unrelated to any protected or union activities of the port drivers. Labor costs were not a factor in the decision to close the terminal.[57]

On February 18, 2020, Gutman Dickenson and co-counsel Jason Wojciechowski held a conference call with Ferrer and co-counsel Rodolfo Agraz. Ferrer indicated a willingness to meet with the Union to discuss the reasons for the Compton closure decision, as well as the effects of the closure. He was adamant, however, that they would not bargain over a collective-bargaining agreement. In response, Gutman Dickinson conveyed the Union's position that Unit employees were laid off in retaliation for their efforts to unionize, and that the decision was taken without notice to the Union and affording it an opportunity to bargain over that decision. She agreed, however, that the Union would agree to meet for effects bargaining, pressed for a response to the information request, and offered to provide the Respondents with appropriate confidentiality agreements. Ferrer agreed to follow-up with his clients.[58]

On February 25, 2020 Ferrer offered to meet for bargaining on March 12, 2020. Gutman Dickinson agreed. When the parties met, they exchanged several proposals. The Respondents' representatives stated that the closure and layoffs were not attributable to labor costs, but rather, the shift to owner-operators and a downward flow of freight. The Respondents, however, remained steadfast in refusing to recognize the Union as the Unit employees' bargaining representative, much less reinstate any Unit employees.[59]

The parties did not meet again to bargain over the effects of the bargaining. However, they subsequently engaged in discussions regarding a non-Board settlement of the unfair labor

[56] The Respondents reaffirmed this position during several conversations in February 2020.

[57] The Respondents' claim that labor costs were not a factor in the decisions to close the Compton facility or layoff Unit employees is contradicted by ULH's 2019 10K form filed with the U.S. Securities and Exchange Commission. That document lists "labor costs" as the only factor affecting expenses, other than rent, that decreases proportionately with the closing of operation facilities. The 10K form additionally lists labor disputes as a risk related to the business, in part because "the terms of [their] collective bargaining agreements also may affect [their] competitive position and results of operations." (GC Exh. 3:14, 16, 35).

[58] This finding is based on Guttman Dickinson's credible and undisputed testimony regarding the February 18 conference call. (Tr. 989-991.)

[59] Gutman Dickinson's rendition of the March 12 bargaining session was corroborated by the undisputed bargaining notes of that meeting. (Jt. Exh. 7 at 129; R Exh. 32 at 2; Tr. 992-99, 1018-19.)

practice charges at issue in this proceeding. Those efforts continued even after the hearing began but were unsuccessful.[60]

O. Vagts Deals Directly with Unit Employee

In late June and early July of 2020, Torres contacted Vagts regarding approximately $100 in unreimbursed work-related gas expenses from June 2018. Vagts initially rejected Torres' request on the grounds that it was untimely but relented after Torres persisted through email and telephone calls, and provided proof. Satisfied with the documentation, Vagts sent Torres a $250 check signed by Phillips along with a signed "CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE," dated July 7, 2020. The check paystub stated that it was for "MV/NLRB SETTLEMENT" and was dated July 23, 2020. While employed by Universal Intermodal, Torres had submitted successful expense reimbursement requests to his supervisor but had never been asked to sign a settlement or general release. Torres did not sign the agreement or cash the check. Instead, he forwarded it to Hidalgo. On July 15, 2020, Hidalgo emailed Vagts:

> It is critical that you immediately cease and desist from engaging in direct dealing with employee Jose Torres regarding settlement of matters involving unpaid wages, unreimbursed business expenses, and related issues arising out of his employment with Universal Intermodal Services Inc. (UIS). As you know, the Teamsters Union is the certified representative of the bargaining unit that Mr. Torres is a part of and all communications and discussions regarding terms and conditions of employment must be directed to the Teamsters.
>
> It has come to my attention that you have been dealing directly with Mr. Torres in attempting to reach a settlement agreement. I am enclosing your attached proposed settlement agreement submitted directly to Mr. Torres. Not only does this settlement agreement contain illegal provisions, but the attempt to require Mr. Torres to waive his vast array of rights for $250 is shameful.

On July 22, 2020, Vagts replied that "the facility has been closed" but failed to respond to the Union's request to meet or provide the Union with the requested information. On July 28, 2020, Hidalgo again emailed Vagts, reiterating that Vagts engaged in direct dealing and it was irrelevant whether the facility was closed since the Union was the Unit's certified bargaining representative. He also demanded bargaining over this issue and repeated his request for documents relied on by Universal Intermodal as a basis for its offer to settle Torres' claims. Vagts never replied to Hidalgo's request to bargain or for the requested information.[61]

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[60] At hearing, Respondents offered evidence of three email communications from the Respondents' as evidence of its efforts to bargain toward a collective-bargaining agreement between January and May 2021. (Tr. 1413-1475.) Attached to the emails were either templates for a collective bargaining agreement, wage rate, and benefits, all of which were entirely devoid of any specific reference to the Unit employees. I rejected the proposed exhibits on the ground that the proffered bargaining proposals occurred in the context of efforts to compromise the charges and as such, are barred pursuant to F. Rule of Evid. 408. See *Contee Sand and Gravel Company*, 274 NLRB 574 fn. 1 (1985).

[61] Vagts did not refute the credible testimony of Torres and Hidalgo regarding their communications with him. (Tr. 677-87, 1083-86; Jt. Exh. 8(a)-(d) and 9; R. Exh. 2-8.)

LEGAL ANALYSIS

I. RESPONDENTS, ULH, AND UMS ARE A SINGLE EMPLOYER AND ENTERPRISE

The Board considers four factors in determining whether separate entities constitute a single employer: (1) interrelations of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. The Respondents' operations were interrelated because they comingled their facilities, management, and other staff, including recruiters, equipment, employees, and customers. Universal Intermodal's employee-drivers were no longer dispatched by their company's dispatchers, but rather, those employed by Southern Counties. Furthermore, the major business and labor decisions for the Respondents were made by Don Taylor and Tim Phillips, establishing a common management and centralized control of labor relations. Finally, Universal Intermodal's 2019 accounting records for the Compton facility do not distinguish between Universal Intermodal and Southern Counties. They simply list all of the revenue generated for work at that facility as "direct revenue," instead of "intercompany revenue." The failure to distinguish facility revenue between the two companies establishes financial control by Universal Intermodal over Southern Counties' operations.

Accordingly, the Respondents acted as a single employer at all material times. See *RAV Truck & Trailer Repair,* 370 NLRB No. 116, slip op. at 4 (2021) (business enterprises acted as single employer when they shared common officers, ownership, directors, management and supervision, common premises and facilities, administered a common labor policy, provided services for and made sales to each other, and interchanged personnel with each other).

II. THE SECTION 8(A)(1) ALLEGATIONS

A. Interrogation

"To determine the lawfulness of an employer's interrogation, the Board evaluates whether, under all of the circumstances, the interrogation reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights." *Healthy Minds, Inc.,* 371 NLRB No. 6, slip op. at 4 (2021), citing *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), affd. sub nom *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In determining whether an unlawful interrogation has occurred, the Board considers the totality of the circumstances, including whether the employee is an open and active union supporter, whether there is a history of employer antiunion hostility or discrimination, the hierarchical position of the questioner, the truthfulness of the employee's answer, the nature of the information sought, and the place and method of interrogation. See *Healthy Minds, Inc.*, supra at 4, citing *Trinity Services Group, Inc.*, 368 NLRB No. 115, slip op. at 1-2 (2019), enf. denied on other grounds, 998 F.3d 978 (D.C. Cir. 2021).

On November 12, Cummings approached Poullard as he was finishing work. After inviting him to attend a meeting, Cummings asked Poullard if he was "aware of the Union" and "how did [Poullard] feel about the Union?" Despite having signed a Union authorization card on November 2, Poullard lied, telling Cummings that he did not know about the Union.

Several *Rossmore* factors weigh against coercion: the Respondents' history of dealing with the Union; Cummings is not a high-level supervisor, nor did Poullard know what position he held, if any, within the company; and the interrogation took place in an informal setting. On the other hand, the remaining *Rossmore* factors strongly suggest the intimidating nature of the encounter. While Poullard did not know what Cummings' position was with Universal Intermodal, Cummings indicated that he was someone with the authority to act on behalf of Universal Intermodal – he told Poullard that he was conducting an employee meeting about the Union that evening and asked him to attend. Clearly, the questions to Poullard, who was not an open Union supporter, were aimed at discovering his union activity. Moreover, Poullard felt it necessary to lie and said he did not know about the Union, even though he signed an authorization card about 10 days earlier. See *Spectrum Juvenile Justice Services*, 368 NLRB No. 102, slip op. at 10 (2019) (employee's attempt to conceal protected activity during interrogation weighed in favor of finding that the questioning was unlawful); cf. *Bourn v NLRB*, 332 F.2d 47, 48 (2d Cir. 1964) (employees truthful responses weighed in favor of finding no violation). Under the circumstances, Cummings' November 12 inquiries to Poullard regarding his sentiment about the Union violated Section 8(a)(1).

B. Soliciting Grievances/Promises to Remedy

The Board has held that "absent a previous practice of doing so . . . the solicitation of grievances during an organizing campaign accompanied by a promise, expressed or implied, to remedy such grievances violates the Act." *Maple Grove Health Care Center*, 330 NLRB 775 (2000). That a Respondent does no more than promise to look into making changes to appease its employees "does not abrogate the anticipation of improved conditions expectable for the employees involved." Id. An employer who has a past policy and practice of soliciting employee grievances may continue such a practice during an organizational campaign. However, an employer cannot rely on past practice to justify solicitation of grievances where the employer "significantly alters its past manner and methods of solicitation." See *Carbonneau Industries*, 228 NLRB 597, 598 (1977).

On November 13, Cummings, Universal Intermodal's statutory agent, met with employees to explain that the disadvantages of unionization, why it was unnecessary and convey the message that the company would do whatever it took to appease any work-related concerns. In response, employee-drivers expressed various work complaints. Cummings replied that that he "would do [them] a favor and get on a redeye flight back to Detroit, and he would sit down with the CEO of Universal and report those issues to him." On November 18, Lugo told employees that if they had any problems with their trucks, they should report those issues directly to him, and "he'd call the mechanic himself and get it straightened out if he had to." Employees began to offer complaints and Lugo wrote them down. He also gave them his personal contact information, inviting them to call him if they had any problems. Again, on November 25, Lugo reiterated that the employees should bring their issues and complaints about the trucks to him, and that those complaints would be addressed as soon as possible.

These solicitations expressly promised to remedy truck maintenance issues and were clearly meant to convey the message that a union was not necessary. See *Watco Transloading, LLC*, 369 NLRB No. 93, slip op. at 6 (2020) (manager unlawfully solicited grievances when he asked employees "about the gripes that the [e]mployees had with the company and what he could

do to resolve them"); cf. *Uarco Inc.*, 216 NLRB 1, 2 (1974) (employer's statement that they would "make one promise" to "do [their] best**"** was legal because it did nothing to support or reinforce employee anticipation of improved conditions of employment which might make union representation unnecessary).

In this instance, Lugo and Cummings, dispatched by Universal Intermodal soon after the representation petition was filed, came bearing gifts. The employee-drivers had never had a manager directly ask them about problems they were having at work, much less offer to resolve them, or provide them with personal contact information. Rather, prior to the Union campaign, any problems they had would be reported to Southern Counties dispatchers. Nor did the Respondents have a previous practice of soliciting grievances in this manner. See *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 351 (2006) (solicitation of grievances was unlawful where employer circulated a survey requesting that employees provide "five areas that needed improvement" because a survey of this kind had never been circulated before); cf. *Wal-Mart Inc.*, 339 NLRB 1187, 1188 (2003) (employer's offer to order new tools and make repairs did not differ in method or manner from their past offers for reparations or tool orders)**.** Under the circumstances, the Respondents' expressed promise to remedy employee grievances violated Section 8(a)(1) of the Act. See *Carbonneau Industries*, 228 NLRB at 598.

C. Respondents' Agreement to Waive Participation in Class and Collective Actions

An employee agreement that "explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found unlawful." *Brinker International Payroll Co. L.P.,* 370 NLRB No. 137, slip op. at 2 (2021). Where an agreement does not contain such an express prohibition, it is facially neutral. There, the Board applies the standard set forth in *Boeing* to determine "whether that agreement, 'when reasonably interpreted, would potentially interfere with the exercise of NLRA rights,"' i.e., the right to file charges with the Board. Id. (quoting *Boeing*, 365 NLRB No. 154, slip op. at 3). The Board has also held that "as a matter of law, there is not and cannot be any legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employee access to the Board or its processes." Id.

Here, the Agreement restricts the right of employees to "bring or participate in any class or collective action… or to join with any other current or former employee in bringing a lawsuit or asserting claims against the Company." Such language is not facially neutral, as the plain meaning of "any" collective action against the employer includes the right to file charges with the Board. However, even if the language in the Agreement is neutral, it is still unlawful under *Boeing* because it would, when reasonably interpreted, interfere with the exercise of the right to file charges with the Board. See id. at 4 (mandatory arbitration agreement was unlawful since it required employees, as a condition of employment, to waive their right to pursue class or collective actions in any forum); *Dish Network, LLC*, 370 NLRB No. 97, slip op. at 3 (2021) (agreement requiring arbitration of "any claim, controversy, and/or dispute . . . arising out of and/or in any way related to . . . employment" was unlawful).

III. THE SECTION 8(A)(3) ALLEGATIONS

The Respondents allegedly violated Section 8(a)(3) and (1) by discharging employees Ledesma and Mallard because they formed, joined, and assisted the Union, and engaged in

concerted activities. Additionally, the complaint alleges that the Respondents unlawfully reduced the unit's work, closed the Compton facility, and laid off the unit employees in order to punish them for voting for the Union.

To prove a discriminatory discharge, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected conduct was a motivating factor in the employer's discharge decision. See *Alternative Energy Applications, Inc*., 361 NLRB 1203, 1205 (2014) (employer discharged an employee because they believed he discussed wages with other employees). The General Counsel satisfies the initial burden by showing (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) the employer's animus toward the protected conduct. See *Healthy Minds, Inc.,* supra at 6 (2021). Animus can be shown by producing evidence "sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." *Tschiggfrie Properties, Ltd*., 368 NLRB No. 120, slip op. at 8 (2019).

Such a showing can be gleaned from direct evidence and inferred from circumstantial evidence based on the record as a whole. See *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019) (animus was shown through circumstantial evidence where the employer demonstrated open hostility to unions, employee's termination came a month after he publicly challenged an anti-union speech, employer shifted reasons for termination from a safety violation (not wearing steel toed shoes) to attendance issues). As support for an inference of unlawful motivation, the Board may rely on, among other factors, disparate treatment of the affected employee and the timing of the discipline relative to the employee's protected activity. *Corn Brothers, Inc.*, 262 NLRB 320, 325 (1982) (timing of discharge within a week of union organizing meeting evidence of antiunion animus); *Cell Agr. Mfg. Co*., 211 NRLB 1228, 1232 (1993) (lay-offs 48 hours after a union meeting suggested animus); See *Bannum Place of Saginaw, LLC,* 370 NLRB No. 117, slip op. at 4 (2021) (animus was shown where an employer discharged a union supporter for conduct that other employees were not disciplined for).

If the General Counsel makes this initial showing, then the burden shifts to the employer to establish that it would have taken the same action even if the employee had not engaged in protected activity. See *Wright Line, a Division of Wright Line, Inc.,* 251 NLRB 1083, 1087 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). It is not sufficient for the employer merely to produce a legitimate basis for the adverse employment action or to show that the legitimate reason factored into its decision. See *Roure Bertrand Dupont, Inc.,* 271 NLRB 443 (1984) (employer did not meet their rebuttal burden where they failed to prove that the employees unprotected conduct weighed more heavily than her protected conduct in the decision to terminate her); cf. *East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 (2018) (employer would have chosen not to restore six stops that had been part the employee bus driver's route before the school year started, absent employees protected activity, because the route took too much time). Instead, it must persuade that the action would have taken place absent protected conduct by a preponderance of the evidence. See *Roure Bertrand Dupont, Inc*., supra. However, "[w]here an employer's purported reasons for taking an adverse action against an employee amount to pretext—that is to say, they are false or not actually relied upon—the employer necessarily cannot meet its *Wright Line* rebuttal burden" and discriminatory motive may be inferred. See *CSC Holdings, LLC*, 368 NLRB No. 106, slip op. at 3 (2019).

A. *Termination of Ledesma*

Ledesma engaged in protected activity when he spoke to his co-workers everyday about the Union, wore his Union vest at work, and vocalized his zealous support for the Union in several meetings. The Respondents knew of these activities, which Ledesma made no attempt to conceal. The Respondents also knew about Ledesma's Arizona CDL license for almost a year. Yet, they only focused on his licensure status one week before the election, and suspended and then discharged him. The proffered reason for the sudden termination was the revelation by Canaday, a safety manager, that Ledesma's out-of-state CDL license could have caused the federal inspection to fail. That assertion proved to be false since the inspection report that issued made no such records being inspected. It was all about the trucks, whether they maintained properly and safe to drive. Moreover, Canadav conceded that Ledesma was eligible for reinstatement once he reinstated his California CDL, which he did. Universal Intermodal, however, never reinstated him or documented the reasons why. Finally, the Respondents never disciplined Ledesma, or anyone else, for possessing an out-of-state CDL license prior to Union intervention. Indeed, the subject of his Arizona license came up when a hold was placed on his company gasoline credit card after California suspended his CDL license. He explained it to the appropriate office at the Respondents' headquarters and the card was reactivated.

The facts and circumstances strongly established a causal relationship between Ledesma's protected activity and his discharge: the timing of Ledesma's discharge; the arbitrary and suspicious manner in which the company implemented and sanctioned him for a problem with his CDL license that did not exist; his open support for the Union; the lack of any disciplinary history of other employees for similar situations; and the lack of any investigation; and Lugo's failure to return his calls after his California CDL was reinstated. See *Lucky Cab Co.*, 360 NLRB 271, 276 (employer knew that employee had violated a company policy but only discharged her after she engaged in union activity).

Such a connection, along with the Respondents' knowledge of Ledesma's union activity, satisfies the General Counsel's burden of proof. See *Bannum Place of Saginaw, LLC,* supra (timing of the discharge, cursory investigation, and disparate treatment support a finding of a causal relationship between employee's protected activity and his discharge); cf. *Volvo Group North America, LLC*, 370 NLRB No. 52 at 5 (2020) (discharge was lawful because there were long time gaps in between union activity and discharge, and a lack of evidence of disparate treatment).

It is not necessary to perform the second part of the *Wright Line* because the Respondents' discharge of Ledesma reeks of pretext. *Gen. Motors LLC*, 369 NLRB No. 127, slip op. at 10 (2020) citing *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003). Universal Intermodal never disciplined Ledesma, or anyone else, for possessing an Arizona CDL license before the Union arrived, gave him no opportunity to obtain a California CDL license before terminating him, and did not reinstate him once he obtained the latter. See *El Paso Electric Co.,* 350 NLRB 151, 153-154, 166 (2007) (no explanation for delay in expressing disapproval of employee's conduct is evidence of pretext), enfd. 272 Fed. Appx. 381 (5th Cir. 2008); see also *Doctors' Hospital of Staten Island, Inc*., 325 NLRB 730, 738 (1998) (delay in acting on alleged misconduct evidence of pretext).

Assuming arguendo that the Arizona CDL was not pretext but merely a dual motive alongside the motive of antiunion animus for the discharge, the Respondents have failed to establish that they would have taken the same action even if Ledesma had not engaged in union or other protected concerted activity. See *Wright Line,* supra at 1089. Respondents only decided to discipline Ledesma when he engaged in union activity, and fail to show that they suspended or terminated any other similarly situated employees or that they maintained any past practice of requiring their drivers to possess California CDL licenses. See *General Motors*, 371 NLRB No. 16, slip op. at 10 fn. 26 (explaining that the Board would find a violation under *Wright Line* when an employer is unable to rebut the General Counsel's burden because it had a history of tolerating the conduct); see also *Bannum Place*, supra at 5 (employer failed to meet its rebuttal burden where it had never disciplined an employee for similar conduct before). Cf. *Fresno Bee*, 337 NLRB 1161, 1161-1162 (2002) (employer lawfully discharged employee for sleeping on the job where the employee had been previously warned and had been disciplined for other infractions)**.**

In the absence of a credible explanation for the Respondents' decision to ignore Ledesma's Arizona CDL licensure status for months and then suddenly terminate him after he spoke up for the Union, the facts and circumstances establish that his suspension and termination was discriminatorily motivated by his Union activity in violation of Section 8(a)(3) of the Act. *See Darbar Indian Restaurant*, 288 NLRB 545 (1988) (circumstantial evidence including timing, contemporaneous violations of the act, shifting and pretextual reasons, the absence of any intervening events supporting discipline, and delay between the conduct cited as the basis for discipline and the actual discipline support " an inference of discrimination").

B. *Termination of Mallard*

Like Ledesma, Mallard was suspended and then terminated prior to the election after he spoke in support of the Union. Mallard openly engaged in union activities, served as a Union resource for his coworkers, wore a Union vest to work, and voiced his Union support to Lugo and Cummings' at the company's pre-election meetings. The circumstances surrounding Mallard's termination suggest that his alleged "insubordination" was pretext for his termination. As Cummings conceded, it was common for employees to walk out of anti-union captive audience meetings, as several did here. Moreover, Mallard was neither told that the meeting was mandatory nor that he was prohibited from leaving it. These considerations strongly suggest that Mallard's suspension and termination for leaving a non-mandatory meeting early was motivated by anti-union animus, thereby establishing the General Counsel's *prima facie* case under *Wright Line*. See 251 NLRB at 1089; see also *Frankl v. HTH Corp. (Frankl II*), 693 F.3d 1051, 1060 (9th Cir. 2012) (employer's disparate treatment of union activists versus other employees was indicative of unlawful animus).

With the burden shifting to it, Universal Intermodal failed to demonstrate that it would suspend and terminated Mallard in the absence of his union activities. Universal Intermodal suspended and terminated no one other than Mallard for leaving a meeting early or refusing to attend one. That is impossible to prove under the facts since the adverse action was pretextual and there was no investigation into his conduct. See *Dish Network*, supra at 2 (employer discharging an employee for conduct which was "commonplace," was evidence of pretext); see also *Shattuck Denn Mining Corp.*, 362 F.2d at 470; *J.L.M. Inc.*, 312 NLRB 304, 323 (1993)

(terminating an employee for alleged insubordination without investigation supports finding of pretext). Even if Mallard's union activity was only part of the Respondents' motive to terminate him, they failed to prove they would have terminated him absent his union activity. Accordingly, the Respondents violated Section 8(a) (3) and (1) of the Act. See *B&B Safety Systems, LLC*, 370 NLRB No. 20, slip op. at 2 (2021) (termination without allowing the employee to "rework" production error was pretextual where employer failed to explain why it permitted other employees to rework production errors without discipline).

C. *The Respondents' Work Reduction, Closure of the Compton Facility, and Employee Layoffs*

Where the work previously done by terminated employees of closed subsidiaries continues to be performed by independent contractors, the *Wright Line* analysis is applied and the focus is on whether the General Counsel has proved that the Respondents' union animus motivated the discipline. See *Int'l Shipping Agency, Inc* 369 NLRB No. 79, slip op. at 3 (2020) (*Wright Line* analysis applied where employer closed facility and contracted out the work previously done by the laid off employees).

Here, the General Counsel proved a p*rima facie* case under *Wright Line* and the Respondents have not met their burden to show "that [they] would have done what [they] did, *when* [they] did, in the absence of the [employees'] union activities." See *We Can, Inc*., 315 NLRB 170, 172 (1994). The Union set up camp right in front of the Compton and Slover facilities, where they solicited and hobnobbed with employee-drivers. The Respondents swiftly responded to the organizing campaign by unleashing a labor consultant to meet with employees and convey the message that it was unnecessary to unionize and the dire consequences if the Union prevailed in the election. He was met with skepticism by Ledesma, Mallard and numerous other employees openly expressed support for the Union, wore union vests and walked out of his meetings. As Ledesma predicted to Cummings at one of his meetings, the employees voted in favor of the Union. The timing of the facility's closure, two days after the Union won the election, sufficiently establishes animus. See *Healthcare Emp.*, 463 F.3d at 920 (timing of the employer's adverse action rendered its anti-Union motive "stunningly obvious").

The Respondents' unlawful motivation for the closures and layoffs is bolstered by the several unfair labor practices in the critical period leading to the election. Cummings engaged in interrogation and other coercive remarks, including statements that the company would close and/or lay-off employees if the union won the election. That was complimented by his and Lugo's promises to resolve employees' work concerns. The extensive unlawful opposition towards the organizing campaign also undermines the contention that the Respondents closed the Compton facility solely because of economic reasons. Although the Compton facility had been unprofitable in the past, and the Respondents preferred an eventual transition to owner-operators, the evidence does not show that they would have laid off the Unit employees and closed the Compton facility at the time they did absent the protected activity. See *Int'l Shipping,* 369 NLRB slip op. at 4 (closure of a subsidiary facility was still unlawful, despite the Respondent's legitimate financial problems, because, while they may have closed at some point, they would not have closed when they did, absent the union).

First, the timing of the closures and layoffs, two days after the union won the election, is suggestive of anti-union motive. See id. (closure two days after the union won the election

suggestive of anti-union motive). The Respondents' reliance on the claim that the actions were motivated by their goal of transitioning to owner-operators is also undermined by the fact that they were recruiting new employee drivers only days after firing those employee drivers who engaged in protected activity. See *Remington lodging*, 363 NLRB No. 112 at 1 (2016) (employer recruited an entirely new housekeeping staff, undermining its stated reason for subcontracting: inability to adequately staff its housekeeping department).

The Respondents also assert that their acquisition of Southern Counties and Container Connection support their claim that they closed the Compton facility and laid-off employee drivers to move towards an exclusive owner-operator model. Yet, Taylor conceded that the Respondents acquired the companies "to be a larger player in the LA Long Beach market," indicating that the owner-operator components of those companies was not what actually motivated their acquisition. Additionally, the Compton facility was profitable at the time of the closure. See *Sunbelt Rentals*, 370 NLRB No. 102, slip op. at 1 (revenue increase before layoffs weighed in favor of finding that the employer would not have laid off employees absent union activity). Accordingly, having failed to persuade that they would have closed the Compton facility and terminate the Unit employees, at the time they did, absent the Union activity, I find that the Respondents violated Section 8(a)(3) and (1) of the Act. *W. F. Bolin Co*, 311 NLRB 1118, 1119 (1993) ("An employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity.")

D. Respondents' Layoffs of Roadrunner and Universal Trucking Employees.

The Roadrunner and Universal Trucking employee drivers were in the beginning stages of a Union campaign. For the same reasons above, I find that, in response to the successful Union election, the Respondents moved to eliminate all employee drivers who were or could be tainted by the Union. This is further evidenced by the fact that they sought to recruit new, untainted, employee drivers days after the lay-off, undermining their stated reason for laying off the employee drivers: a shift towards owner drivers. See *Remington lodging*, 363 NLRB slip op. at 1; see also *Int'l Shipping, Inc.*, 369 NLRB No. 79 (2020) (employer's extensive opposition to the union undermined its assertion that it laid off employees solely for financial reasons); see also *Davey Roofing, Inc*., 341 NLRB 222, 223 (2004) (temporal proximity between union activity and employer's adverse action is evidence of unlawful motivation).

IV. THE 8(A)(5) ALLEGATIONS

Section 8(d) imposes the mutual obligation on employers and unions to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment." Section 8(a)(5) of the Act provides that "[i]t shall be an unfair labor practice for an employer – to refuse to bargain collectively with the representative of his employees …." Section 8(d) defines collective bargaining to include "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, …." A refusal to negotiate in fact as to any subject which is within s 8(d), and about which the union seeks to negotiate, violates Section 8(a)(5)[.]" *NLRB. v. Katz*, 369 U.S. 736, 743 (1962). Furthermore,

an employer violates Section 8(a)(5) of the Act by "failing and refusing to furnish relevant information to the Union." See *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 436 (1967).

A. *Unilateral Change to the Terms and Conditions of Employment.*

Under the Act, an employer cannot insist on provisions that "would exclude the labor organization from any effective means of participation in important decisions affecting the terms and conditions of employment of its members." See *Frankl I*, 650 F.3d 1334, 135 (9th Cir. 2011) (quoting *United Contractors, Inc*., 244 NLRB 72, 73 (1979)) (internal quotation marks omitted). The Board has consistently held that an employer's decision to lay off bargaining unit employees for economic reasons is a change to terms and conditions of employment and is a mandatory subject of bargaining that triggers the duty to provide notice and an opportunity to bargain. See *Sunbelt Rentals, Inc.,* supra (employer violated Section 8(a)(5) and (1) by failing to bargain over its decision to eliminate the bargaining unit); see also *Cascades Containerboard Packaging*, 370 NLRB No. 76 slip op. at 1 (2021) (employer violated Section 8(a)(5) by failing to notify the union before deciding to lay off bargaining unit employees).

At a minimum this means that the employer must "inform the union of its proposed actions under circumstances which afford a reasonable opportunity for counter arguments or proposals." *Pontiac Osteopathic Hospital*, 336 NLRB 1021, 1023 (2001), quoting *NLRB v. Citizens Hotel Co*., 326 F.2d 501, 505 (5th Cir. 1964). An employer does not meet its Section 8(a)(5) duty to bargain when it simply announces a final decision to the union and the circumstances make clear that bargaining would be fruitless. See *Brannan Sand & Gravel Co*., 314 NLRB 282, 282 (1994).

Here, the Respondents reduced the work of the employee drivers, transferred, and subcontracted that work to the Southern Counties owner-operators, closed the Compton facility, and laid off the Unit without bargaining with the Union. The Respondents gave the Union no notice of these changes, which the Union only learned about after the fact through the employees. Under these circumstances, it is clear that "the Union was not afforded a reasonable opportunity for counter arguments or proposals." See *Comau, Inc*., 364 NLRB No. 48, slip op. at 6, 24 (2016) (violation where notice was given six days before implementation); see also *Pontiac Osteopathic Hospital*, 336 NLRB at 1022-1024 (violation where notice was given 20 days before implementation); *Defiance Hospital*, 330 NLRB 492, 493 (2000) (violation where employer's letter gave union seven days to respond to the notice of a change); cf. *Jim Walter Recources,* 289 NLRB 1441, 1442 (10 days was sufficient notice where the Union failed to request bargaining). Accordingly, I find that the Respondents violated section 8 (a)(5) of the Act by unilaterally changing the terms and conditions of employment for the Unit employees. See *Sunbelt Rentals, Inc*., supra at 1.

B. *Respondents' Refusal to Provide the Union with Information Relevant and Necessary for Collective Bargaining.*

Under the Act, upon request, an employer is obligated to furnish a union with information that is "needed by the bargaining representative for the proper performance of its duties." *Acme Industrial Co.,* 385 U.S. at 436. In order to avoid this obligation, an employer carries the burden of proving lack of relevance. See *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003).

Information that relates to unit employees' terms and conditions of employment is presumptively relevant. See *RAV Truck & Trailer Repair*, supra (employment policies; health and safety policies; disciplinary records and policies; employee evaluations were all presumptively relevant); see also *NP Palace LLC*, 386 NLRB No. 148, slip op. at 4 (2019) (employee information, including names, dates of hire, rates of pay, job classification, last known address, phone number was presumptively relevant); cf. *F. A. Bartlett Tree Expert Co*., 316 NLRB 1312, 1313 (1995) (employer's customer contracts are not presumptively relevant because it was outside the scope of employees' terms and conditions of employment).

Here, the Respondents have failed to provide information which concerns the terms and conditions of employment of unit employees, is presumptively relevant for purposes of collective bargaining and must be furnished on request. See *Transit Connection*, Inc., 365 NLRB No. 143 (2017) (various employee and employment information and disciplinary actions). Accordingly, I find that by failing to provide the Union this information, the Respondents have violated Section 8(A)(5) and (1) of the Act.

C. *Respondents' Direct Dealing with Torres*

An employer engages in direct dealing when: it communicates directly with union-represented employees; its discussion was to establish or change wages, hours, and terms and conditions of employment or to undercut the union's role in bargaining; and the communication was made to the exclusion of the union. See *El Paso Electric Co*., 355 NLRB 544, 545 (2010).

In July 2020, Torres requested reimbursement of several unpaid work expenses. In response, the Respondents sought to have him sign a waiver of his right to over seven months of backpay for $250 dollars. The Respondents, however, failed to notify the Union of such an offer as the exclusive collective-bargaining representative of Unit employees. Nor did they offer the Union an opportunity to bargain over Torres's settlement, which related to his terms and conditions of employment. Accordingly, I find that the Respondents unlawfully bypassed the Union and engaged in direct dealing, in violation of Section 8(a)(5) and (1) of the Act. See *Blast Soccer Associates*, 289 NLRB slip op No. 11 at 1 (1988) (unilaterally adjusting employee's grievance without honoring the union's statutory right to be present at the settlement discussion violated the Act).

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times relevant herein, the Respondents, as well as ULH and UMS, acted as a single employer and single enterprise.

4. The Respondents violated Section 8(a)(1) of the Act by:

(a) Maintaining as a condition of employment for Universal Intermodal employees an

Agreement entitled Agreement to Waive Participation in Class and Collective Actions that contains provisions prohibiting employees from engaging in protected activity.

(b) Interrogating an employee about the employee's support for the Union.

(c) Soliciting employee complaints and grievances, promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity.

5. The Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) Discharging employees Ledesma and Mallard because they engaged in Union activities.

(b) Reducing the work assigned to the Unit employees because they voted to be represented by the Union.

(c) Laying off the Roadrunner employees because they engaged in Union activity.

(d) Laying off the Universal Trucking employees because they engaged in Union activity.

(e) Closing the Compton facility and laying off the Unit employees because the Unit employees voted to be represented by the Union.

(f) Moving the work formerly assigned to the Unit employees to Southern Counties drivers because the Unit voted to be represented by the Union.

6. The Respondent violated Section 8(a)(5) and (1) of the Act by:

(a) Reducing the work assigned to the Unit employees without providing notice to or an opportunity to bargain with the Union.

(b) Closing the Compton facility and laying off the Unit employees without providing notice to or an opportunity to bargain with the Union.

(c) Moving the work formerly assigned to the Unit employees to Southern Counties drivers without providing notice to or an opportunity to bargain with the Union.

(d) Refusing to bargain with the Union about the terms and conditions of the Unit employees.

(e) Refusing to furnish the Union with requested relevant information in preparation for negotiations.

(f) Refusing to furnish the Union with requested relevant information regarding Unit employee Torres's settlement..

(g) Bypassing the Union and dealing directly with Torres about his terms and conditions of employment.

(h) Refusing to bargain with the Union over issues related to Torres' employment.

7. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents, having violated Section 8(a)(3), (5) and (1) by closing the Compton facility, laying off employees at that facility, as well as the Slover and Fontana facilities, and terminating two other Compton facility employees, shall be ordered to restore the status quo by rescinding those changes and offering the laid-off and terminated employees full reinstatement to their former jobs, or to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the aforementioned employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Additionally, I shall order the Respondents to compensate the laid-off and terminated employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). In addition, we shall order the Respondents to file with the Regional Director for Region 21 a copy of the employees' corresponding W-2 form(s) reflecting the backpay awards.

The Respondents shall also be required to expunge from their files any and all references to the unlawful layoffs and terminations and to notify those employees in writing that this has been done and that the layoffs or terminations will not be used against them in any way.

The Respondents are ordered to post a remedial notice for 60 consecutive days in conspicuous places at Roadrunner Intermodal Services, LLC, Universal Truckload, Inc., and companies where Unit employees are reinstated to their prior positions, where notices to employees are usually posted, and distribute the notice electronically via email, intranet, internet, or other appropriate means to Unit employees. See *J Picini Flooring*, 356 NLRB No. 9 (2010). Additionally, the Respondents shall be ordered to publicly read of the remedial notice to employees in order to reassure bargaining unit employees that their rights under the Act will not be violated in the future. *International Shipping Agency, Inc.*, 369 NLRB No. 79, slip op. at 8 (2020) (quoting *J.P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969)).

The Respondents shall also be required to hold meetings during working hours at its Roadrunner Intermodal Services, LLC, Universal Truckload, Inc., and any other facility where Unit employees are placed, scheduled to ensure the widest possible attendance of employees, at which the remedial notice is to be read to employees by a high-ranking manager in the presence of a Board agent, and a Union representative if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of management and, if the Union so desires, a Union representative. Finally, a Union representative shall be permitted to make an audio-visual recording of the notice reading. See, e.g., *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177 (2018), affd. in relevant part 803 Fed. Appx. 876 (6th Cir. 2020). The Respondent's unlawful elimination of the bargaining unit may leave the Unit without its full complement of employees at the time of the notice reading; the recording would therefore aid the Union in informing subsequently hired Unit employees of the Respondents' misconduct. It would also provide continuing assurance to employees that they have a right to engage in union activity without fear of retaliation.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[62]

ORDER

The Respondents, Mason-Dixon Intermodal d/b/a Universal Intermodal Services, located in Compton, California, Southern Counties Express, Inc., located in Rancho Dominguez, California, Roadrunner Intermodal Services, LLC, located in Wilmington and Fontana, California, and Universal Truckload, Inc., located in Fontana, California, their officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Maintaining and enforcing an *Agreement to Waive Participation in Class and Collective Actions* that employees reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

b. Maintaining and/or enforcing an *Agreement to Waive Participation in Class and*

[62] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Collective Actions that requires employees, as a condition of employment, to waive the right to engage in protected concerted activity, including class or collective action, private attorney general action, group action, or to join with any other current or former employee to bring a lawsuit or asserting claims against the Respondents.

c. Terminating, suspending, reducing unit employees' hours or work, or transferring work in retaliation for their union activity.

d. Closing facilities in retaliation for employees' union activity.

e. Interrogating employees about their union sentiments or activity.

f. Soliciting complaints from employees and promising benefits and improved terms and conditions of employment if they refrain from union organizational activity.

g. Refusing to provide the Union with information requested and necessary for bargaining.

h. Refusing to negotiate with the Union over a collective bargaining agreement or any other terms and conditions of employment, including by directly dealing with employees regarding their terms and conditions of employment.

i. In any like or related matter interfering with employees' rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

a. Rescind the *Agreement to Waive Participation in Class and Collective Actions* that requires employees to waive the right to engage in protected concerted activity, including class or collective action, private attorney general action, group action, or to join with any other current or former employee to bring a lawsuit or asserting claims against Mason-Dixon Intermodal d/b/a Universal Intermodal Services.

b. Notify all former employees who were required to sign or otherwise become bound to the *Agreement to Waive Participation in Class and Collective Actions* in any form that the *Agreement to Waive Participation in Class and Collective Actions* have been rescinded and are no longer in force.

c. Within 14 days of the issuance of the Order, restore the Unit, by offering Unit employees who were laid off as a result of Mason-Dixon Intermodal d/b/a Universal Intermodal Services' closing of the Compton facility and offer, in writing, reinstatement to the Unit employees who worked at the Compton facility to their former positions or if those positions no longer exists, to a substantially equivalent position at a location in or near Compton, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement within five (5) days to all employees due to reduced work levels, discriminatees not immediately offered

reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

d. Within 14 days of the issuance of the Order, restore the Unit, by offering Unit employees who were based out of the Slover facility and laid off as a result of Mason- Dixon Intermodal d/b/a Universal Intermodal Services' closing the Compton facility and offer, in writing, reinstatement to the eight Unit employees who worked at the Slover facility to their former positions or if those positions no longer exist, to a substantially equivalent position at a location in or near Fontana, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement to all employees due to reduced work levels, discriminatees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

e. Within 14 days of the issuance of the Order, restore the lawful status quo with regard to the level of employee driver work at Universal Intermodal.

f. Make all laid-off Unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

g. Compensate all laid-off Unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to the employees, it will be allocated to the appropriate calendar quarters.

h. Within 14 days of the issuance of the Order, offer employees Romel Mallard and Johnathan Ledesma reinstatement to their former jobs with Mason-Dixon Intermodal d/b/a Universal Intermodal Services or, if those jobs no longer exist, to substantially equivalent positions at a location in or near Compton, California, without prejudice to their seniority or any other rights or privileges previously enjoyed.

i. Within 14 days of the issuance of the Order, remove from their files any reference to the suspension and termination of Ledesma, and within 3 days thereafter, notify employee Ledesma in writing that this has been done and that neither the suspension nor the termination will not be used against him in any way.

j. Within 14 days of the issuance of the Order, remove from their files any reference to the suspension and termination of Mallard, and within 3 days thereafter, notify employee Mallard in writing that this has been done and that neither the suspension nor the termination will not be used against him in any way.

k. Make employee Jonathan Ledesma whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

l. Compensate employee Jonathan Ledesma for the adverse tax consequences, if

any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to Ledesma, it will be allocated to the appropriate calendar quarters.

m. Make employee Romel Mallard whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

n. Compensate employee Romel Mallard for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to Mallard, it will be allocated to the appropriate calendar quarters.

o. Within 14 days of the issuance of the Order, offer all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; displacing, if necessary, any employees who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement to all employees due to reduced work levels, discriminatees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

p. Make all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

q. Compensate all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to the employees, it will be allocated to the appropriate calendar quarters.

r. Within 14 days of the issuance of the Order, recognize the Union as the bargaining representative of the following Unit:

> Included: All full-time and regular part-time port drivers employed by the Employer working or dispatched out of the Employer's facility currently located at 2035 Vista Bella Way, Compton, California.
>
> Excluded: All other employees, dispatchers, mechanics, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

s. At the Union's request, bargain in good faith with the Union regarding wages, hours and working conditions, and if an agreement is reached with the Union, sign a document containing that agreement.

t. Within 14 days of the issuance of the Order, furnish the Union with the information set forth in request numbers 1(b)-(c), 1(f), 1(ii)-(v), 1(n)-(q), 6(a)-(b), 7-10, 11(a)-(k), and 11(m)-(p) of its January 18, 2020 letter and in its July 15, 2020 email.

u. Within 14 days, post at Roadrunner Intermodal Services, LLC, Universal Truckload, Inc., and companies where Unit employees are returned to work, copies of the attached notice applicable to each marked "Appendix."[63] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representative, shall be posted by the Respondent in English and Spanish and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, notices shall be duplicated and mailed, at the Respondents' expense, to all current employees and former employees employed at any time since November 12, 2019 by Universal Intermodal, Universal Trucking and Roadrunner.

v. Hold one or more mandatory employee meetings, on working time and at times when Roadrunner Intermodal Services, LLC, Universal Truckload, Inc., and the company where the Unit employees are returned to work, customarily hold employee meetings, and schedule to ensure the widest possible employee attendance, with proper social distancing measures due to the COVID-19 pandemic, at which the Order will be read in English and Spanish to employees by a responsible official of each company in the presence of a Board agent or, at the each company's option, by a Board agent in the presence of a responsible official of that company; (ii) announce the meeting(s) for the order reading in the same manner it would customarily announce a meeting of employees; and (iii) require that all employees attend the meeting(s).

w. If the facilities involved in these proceedings are open, the Order must be read within 10 (ten) days after the Order issues. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the COVID-19 pandemic, the Order must be read within 14 days after the facilities reopen and half of the bargaining unit employees have returned to work; but regardless of staffing level, the Order must be read no later than 90 days after the issuance of the Order.

[63] If the facility involved in these proceedings is open and staffed by a substantial compliment of employees, the notices must be posted and read within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted and read within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted or read until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

x. Within fourteen days after service by the Region, post copies of the Order in English and Spanish at Respondents' Southern California facilities where notices to employees are customarily posted and maintain such postings free from all obstructions and defacements during the pendency of the Board's administrative proceedings.

y. Within 21 days of the issuance of the Order, notify the Regional Director of Region 21, in writing, the manner in which Respondent has complied with the terms of the order, including how they have posted and communicated the documents required by the Order.

Dated, Washington, D.C. October 19, 2021

Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT require, maintain and/or enforce any agreement that requires you, as a condition of employment, to waive the right to engage in protected concerted activity, including class or collective action, private attorney general action, group action, or to join with any other current or former employee to bring a lawsuit or asserting claims with any government agency against Mason-Dixon Intermodal d/b/a Universal Intermodal Services.

WE WILL NOT terminate, suspend, reducing employees' hours or work, or transferring work in retaliation for their union activity.

WE WILL NOT close facilities in retaliation for employees' union activity.

WE WILL NOT interrogate employees about their union sentiments or activity.

WE WILL NOT solicit complaints from employees and promise benefits and improved terms and conditions of employment if they refrain from union or other organizational activity.

WE WILL NOT refuse to provide the International Brotherhood of Teamsters with information requested and necessary for bargaining on behalf of the Mason-Dixon Intermodal d/b/a Universal Intermodal Services' employees in the following appropriate unit (the Unit):

Included: All full-time and regular part-time port drivers employed by the Employer working or dispatched out of the Employer's facility currently located at 2035 Vista Bella Way, Compton, California.

Excluded: All other employees, dispatchers, mechanics, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT refusing to negotiate with the International Brotherhood of Teamsters over a collective bargaining agreement or any other terms and conditions of employment, including by directly dealing with employees regarding their terms and conditions of employment.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the *Agreement to Waive Participation in Class and Collective Actions* that requires employees to waive the right to engage in protected concerted activity, including class or collective action, private attorney general action, group action, or to join with any other current or former employee to bring a lawsuit or asserting claims with any agency against the Respondents.

WE WILL, within 14 days, restore the Unit by offering Unit employees who were laid off as a result of Mason-Dixon Intermodal d/b/a Universal Intermodal Services' closure of the Compton facility reinstatement to their former positions or if those positions no longer exist, to a substantially equivalent position at a location in or near Compton, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement within five (5) days to all employees due to reduced work levels, discriminatees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

WE WILL, within 14 days, restore the Unit by offering the eight (8) Unit employees who were based out of the Slover facility and laid off as a result of Mason- Dixon Intermodal d/b/a Universal Intermodal Services' closing the Compton facility and offer, in writing, reinstatement to those eight Unit employees who worked at the Slover facility to their former positions or if those positions no longer exist, to a substantially equivalent position at a location in or near Fontana, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement to all employees due to reduced work levels, discriminatees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

WE WILL, within 14 days, restore the lawful status quo with regard to the level of employee driver work at Universal Intermodal.

WE WILL make all laid-off Unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate all laid-off Unit employees for the adverse tax consequences, if any,

of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that it will be allocated to the appropriate calendar quarters.

WE WILL, within 14 days of the issuance of the Order, offer employees Romel Mallard and Johnathan Ledesma reinstatement to their former jobs with Mason-Dixon Intermodal d/b/a Universal Intermodal Services or, if those jobs no longer exist, to substantially equivalent positions at a location in or near Compton, CA, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL within 14 days of the issuance of the Order, remove from their files any reference to the suspensions and terminations of Ledesma and Mallard, and within 3 days thereafter, notify employee Ledesma in writing that this has been done and that neither the suspension nor the termination will not be used against him in any way.

WE WILL make employees Jonathan Ledesma and Romel Mallard whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate employees Jonathan Ledesma and Romel Mallard for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to them, it will be allocated to the appropriate calendar quarters.

WE WILL, within 14 days of the issuance of the Order, offer all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; displacing, if necessary, any employees who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement to all employees due to reduced work levels, discriminatees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

WE WILL make all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to the employees, it will be allocated to the appropriate calendar quarters.

WE WILL, within 14 days of the issuance of the Order, immediately recognize the Union as the bargaining representative of the Universal Intermodal unit and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees described in the Unit above concerning wages, hours and working conditions. If an agreement is reached with the Union, sign a document containing that agreement.

WE WILL, within 14 days of the issuance of the Order, furnish Mason-Dixon Intermodal d/b/a Universal Intermodal Services the Union with the information requested January 18, 2020 and July 15, 2020.

MASON-DIXON INTERMODAL D/B/A
UNIVERSAL INTERMODAL SERVICES
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

U.S. Courthouse-Spring Street, 312 N. Spring Street, Suite 10150, Los Angeles, CA 90012
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-252500 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (213) 634-6502.

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT lay off employees in retaliation for their union activity.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days, offer employees who were laid by Roadrunner Intermodal Services, LLC in December 2019 reinstatement to their former positions or if those positions no longer exist, to a substantially equivalent position at a location in or near Fontana, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement within five (5) days to all employees due to reduced work levels, employees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

WE WILL MAKE all employees who were laid-off from Roadrunner Intermodal Services, LLC in December 2019 whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate all employees who were laid-off from Roadrunner Intermodal Services, LLC and Universal Truckload, Inc. in December 2019 for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to the employees, it will be allocated to the appropriate calendar quarters.

ROADRUNNER INTERMODAL SERVICES, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

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NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT lay off employees in retaliation for their union activity.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days, offer employees who were laid by Universal Truckload, Inc. in December 2019 reinstatement to their former positions or if those positions no longer exist, to a substantially equivalent position at a location in or near Fontana, California without prejudice to seniority or any other rights and privileges previously enjoyed, displacing, if necessary, any employee who may have been hired or reassigned to replace them. To the extent it may be impossible to offer reinstatement within five (5) days to all employees due to reduced work levels, employees not immediately offered reinstatement shall be offered reinstatement to their former positions from a preferential hiring list as those positions become available.

WE WILL MAKE all employees who were laid-off from Universal Truckload, Inc. in December 2019 whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate all employees who were laid-off from Universal Truckload, Inc. in December 2019 for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and submit the appropriate report to the Social Security Administration so that when backpay is paid to the employees, it will be allocated to the appropriate calendar quarters.

UNIVERSAL TRUCKLOAD, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

U.S. Courthouse-Spring Street, 312 N. Spring Street, Suite 10150, Los Angeles, CA 90012
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